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E-filed 6/9/2017

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

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HUAN CHANG MA,

Plaintiff,

v.

DAVID W. JENNINGS, et al.,

Defendants.

Case No.17-cv-03307-HRL

ORDER TO SHOW CAUSE

Petitioner Huan Chang Ma (“Ma”) has filed a petition for writ of habeas corpus pursuant to 28 U.S.C. Section 2241 and an application for an order to show cause pursuant to 28 U.S.C. Section 2243. Ma alleges that he is being detained unlawfully by Respondents “based on a removal order that cannot be executed” in violation of the Immigration and Nationality Act (“INA”), 8 U.S.C. Section 1231(a)(6), and the Fifth Amendment of the U.S. Constitution. Dkt. No. 1, ¶ 1. For the reasons described below, the court orders Respondents to show cause why the petition should not be granted.

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BACKGROUND

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The petition alleges that Ma, who was born in China in 1971, was admitted to the United States as a permanent legal resident in 1990. Dkt. No. 1, ¶¶ 17, 18. Ma, a non-citizen, plead guilty to manufacturing marijuana plants in violation of 21 U.S.C. Section 841(a)(1) in May 2015, and completed his prison sentence in September 2016. *Id.*, ¶¶ 19, 20. Ma was subsequently detained by Immigration and Customs Enforcement (“ICE”). *Id.*, ¶¶ 20-22.

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Ma alleges that, despite the issuance of a final order of removal on December 1, 2016, *id.*,

¶ 2, Respondents have been attempting to remove him to China without success (because China allegedly does not cooperate in accepting its citizens for removal and has not responded to Ma's requests here), *id.*, ¶¶ 4, 24. Ma asserts that he is neither a flight risk nor a danger to the community and that his removal is not "significantly likely to occur in the reasonably foreseeable future." *Id.*, ¶¶ 5, 25, 26.

Respondent David Jennings is the Field Office Director for ICE's San Francisco Field Office, which has jurisdiction over Hawaii, where Ma is currently being held. Respondent Thomas D. Homan is the Acting Director of ICE. Respondent John F. Kelly is the Secretary of the U.S. Department of Homeland Security, which oversees ICE. And Respondent Jefferson B. Sessions III is the Attorney General of the United States.

LEGAL STANDARD

District courts have jurisdiction to review a petition for a writ of habeas corpus where the petitioner is "in custody in violation of the Constitution or laws or treaties of the United States." 28 U.S.C. § 2241(c)(3). Section 2241 proceedings are available for "statutory and constitutional challenges to post-removal-period detention" of non-citizens who have been admitted to the United States. *Zadvydas v. Davis*, 533 U.S. 678, 687-88, 693 (2001). Courts "shall forthwith award the writ or issue an order directing the respondent to show cause why the writ should not be granted, unless it appears from the application that the applicant or person detained is not entitled thereto." 28 U.S.C. § 2243. Summary dismissal is appropriate only where "the allegations in the petition are 'vague [or] conclusory' or 'palpably incredible,' . . . or 'patently frivolous or false.'" *Hendricks v. Vasquez*, 908 F.2d 490, 491 (9th Cir. 1990) (quoting *Blackledge v. Allison*, 431 U.S. 63, 75-76 (1977)).

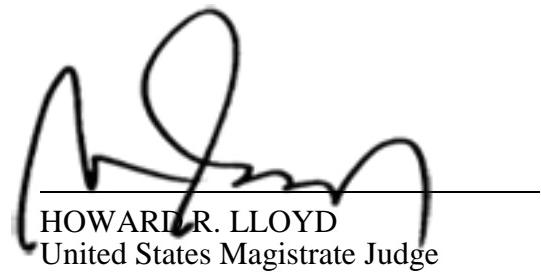
DISCUSSION

Petitioner alleges that his continued detention past the presumptively reasonable 6-month-period described in *Zadvydas* violates 8 U.S.C. Section 1231(a)(6) and the Fifth Amendment. After reviewing the petition, the court cannot say that the allegations contained therein are vague, conclusory, patently incredible, or patently frivolous or false. Therefore, Respondents are directed to show cause why the petition should not be granted.

1 Petitioner shall serve this order to show cause upon the Respondents immediately. For the
2 reasons described above and for good cause shown, Respondents shall file an answer responding
3 to the allegations of the petition and showing cause why a writ of habeas corpus should not be
4 issued by June 16, 2017. Petitioner shall file a traverse by June 23, 2017. The court will hold a
5 hearing on this order to show cause on June 29, 2017, at 10:00 AM in Courtroom 2, Fifth Floor of
6 the United States District Court, 280 South First Street, San Jose, CA.

7 **IT IS SO ORDERED.**

8 Dated: 6/9/2017

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12 HOWARD R. LLOYD
13 United States Magistrate Judge
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